IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 18371 of 2004

Between:

C.Rayavaram Gram Panchayat, Yeleswaram Mandal,
East Godavari District, rep.by its Sarpanch Eepi Nagaraju,
S/o Ramanna, aged about 57 years, Occ: Agriculture
R/o C.Rayavaram Village, Yeleswaram Mandal,
East Godavari District

..... PETITIONER

AND

1 The District Collector (Panchayat Wing), East Godavari District,
Kakinada
2 The District Panchayat Officer, East Godavari District, Kakinada
3 The Asst.Director of Mines and Geology, Rajahmundry,
East Godavari District
4 The Yeleswaram Gram Panchayat, Yeleswaram Mandal,
East Godavari District, rep.by its Sarpanch

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondents 1 and 2 with holding the seigniorage cess collected from the lessee of the quarry situated in Survey Numbers6/2 and 43/2 & 3 of C.Rayavaram Gram Panchayat and paying it to 4th respondent Gram Panchayat, as highly illegal, arbitrary, contrary to the provisions of A.P.Panchayat Raj Act and consequently direct the respondents 1 to 3 to release the arrears of seigniorage cess collected from the lessee of the Quarries situated in Survey Numbers6/2 and 43/2 & 3 of C.Rayavaram Village, relating to three quarters in the year 2002, i.e., April 2002 to December 2002, plus two quarters during the 2003 i.e.from April 2003 to September 2003, in addition to the arrears relating to the

period from 10-5-1995 to the end of the year 2001, along with arrears to the current year from january, 2004 onwards to the account of Petitioner Gram Panchayat.

Counsel for the Petitioner:MR.GODEY SATISH

Counsel for the Respondent Nos.1 to 3: G.P. for Panchayat Raj and Rural Development

Counsel for the Respondent No.4 : Sri.P.Raghavender Reddy

The Court made the following :

ORDER:

This writ petition is filed by the C.Rayavaram Gram Panchayat, Yeleswaram Mandal, East Godavari District, represented by its Sarpanch Eepi Nagaraju, with a prayer to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of respondents 1 and 2 in withholding seigniorage cess collected from the lessee of quarry situated in Survey Numbers 6/2 and 43/2 & 43/3 of C.Rayavaram Gram Panchayat.

2. C.Rayavaram Gram Panchayat was carved out from the Yeleswaram Gram Panchayat. The lands bearing Survey Numbers 1 to 53 are within the Gram panchayat limits of C.Rayavaram. Quarrying has been going on in Survey Numbers 6 and 43 of C.Rayavasram village. The grievance of the petitioner is that seigniorage cess collected from the lessee is not being credited to the petitioner gram panchayat, and instead it is being credited to Yeleswaram Gram panhayat. Thus this writ petition seeking a direction to respondents 1 to 3 to credit due share in seigniorage cess to the account of the petitioner.

3. Counter-affidavits have been filed by second and fourth respondents. Sri.K.Sudhakar has sworn to the counter-affidavit filed on behalf of the second respondent. It is stated in the counter-affidavit that the bifurcation of boundaries between C.Rayavaram Gram Panchayat and Yeleswaram Gram Panchyat made in 1995 was not in accordance with natural boundaries and therefore, the two Gram panchayats need
re-notification and the proceedings for refixation of the boundaries between the two Gram panchayats are pending with the Government. I deem it appropriate to refer to para 3 of the counter-affidavit and it is thus:

> “In reply to para 4 of the affidavit, it is submitted that the bifurcation was

done in 1995 and in 1995 an error had crept into the proceedings. The survey Numbers 42 and 43 of erstwhile Yeleswaram have been erroneously included in C.Rayavaram Gram panchayat. These two survey numbers lie on the other side of Yeluru canal and for purpose of a viable and natural boundary these two survey numbers should not be disturbed and should be continued in Yeluswaram Gram panchayat for all purposes. The error was subsequently noticed and proposals were submitted to the Government for re-notifying the areas of two panchayats. They are under correspondence with the Govcernment."

4. The fourth respondent i.e., Yeleswaram Gram Panchayat has filed counter-affidavit. A Chalamaiah, Sarpanch of Yeleswaram Gram Panchayat, has sworn to the counter-affidavit. It is stated in para 4 of the counter-affidavit that Yeleswaram Gram Panchayat is not concerned with Survey Number 6 and with regard to Survey Number 43, an appeal is pending with the Government for refixation of the boundaries between the two Gram panahcyats. It is stated in para 6 of the counter-affidavit which reads as under:

" In reply to paras 7 and 8 of the affidavit, I submit that when the 2nd respondent credited the amount ofRs.4,28,898/- to the C.Rayavaram Gram Panchayat, then the fourth respondent Gram Panchayat has made representation stating that the matter is pending with the Government then the seigniorage amount has not been credited to the petitioner-gram panchayat, then the second respondent issued a letter Roc.2702.2004-A7, dt.7.8.2004 not to utilize the seigniorage amount by the Yeleswaram gram panchjayat till finalisation of the issue. The other averments made in para 8 are not true and correct since the entire issue is pending with the Government and a detailed letter is addressed by the second respondent herein vide his letter Roc.No. 3179/02-A4, dated 22.03.2004.

5. Heard Sri.Godey Satish, learned counsel appearing for the petitioner, learned Government Pleader for Panchayat Raj appearing for respondents 1 to 3, and Sri.P.Raghavender Reddy, learned counsel appearing for the fourth respondent.

6. It is contended by the learned counsel for the petitioner that the District Collector, having issued a show cause notice with regard to refixation of the boundaries, withdrew the same and consequently the writ petition filed by the petitioner questioning the said show cause notice ended in dismissal as withdrawn vide order dated 23.07.2003 passed in W.P.No.23809 of 2002. He would further contend that Survey Numbers 42 and 43 fall within the limits of the writ petitioner-gram panchayat and therefore, the writ petitioner-gram panchayat is entitled to its share in

seigniorage cess collected from the lessee.

7. Learned counsel appearing for the fourth respondent submits that the matter is ceased by the Government and till refixation of the boundaries, the writ petitioner is not entitled to claim share in the seigniorage cess collected from the lessee for quarrying in Survey Numbers 42 and 43. Learned Government Pleader for Panchayat Raj appearing for respondents 1 to 3 submits that refixation of the boundaries between the two villages is under process and therefore, the writ petition is premature and the same is liable to be dismissed.

8. It is an undisputed fact that C.Rayavaram Gram Panchayat was carved out from Yeleswaram Gram Panchayat in the year 1995. Survey Numbers 6 and 43 are within the jurisdiction of C.Rayavaram Gram Panchayat. Till the refixation of the boundary limits, the writ petitioner-gram panchayat is entitled to claim its due share in seigniorage cess collected from the lessee in respect of Survey Numbers 6, 43/2 and 43/3. The fourth respondent does not dispute about Survey Number 6/2. The dispute is only with regard to Survey Numbers 42 and 43. As the lands bearing Survey Numbers 43/2 and 43/3 are within the gram panchayat limits of the petitioner as on this day, the petitioner is entitled to claim its share in seigniorage charges collected from the lessee in respect of Survey Numbers 6/2, 43/2 and 43/3. The refusal on the part of respondents 1 to 3 in paying due share to the petitioner-gram panchayat is solely unjustified and arbitrary.

9. Hence, the writ petition is allowed issuing a direction to respondents 1 to 3 to pay the petitioner-gram Panchayat its due share in seigniorage cess collected from the lessee for quarrying in Survey Numbers 6/2, 43/2 and 43/3. No order as to costs.

_____

21.06.2005

sh

To

1 The District Collector (Panchayat Wing), East Godavari District, Kakinada
2 The District Panchayat Officer, East Godavari District, Kakinada
3 The Asst.Director of Mines and Geology, Rajahmundry,

East Godavari District
4 The Sarpanch, Yeleswaram Gram Panchayat, Yeleswaram Mandal,
East Godavari District.

5 2 CD copies.